

Department of the Army, DoD

§ 536.105

(1) In 1968, technicians, who were state employees formerly, were made federal employees. Along with federal employee status came FTCA coverage. Technicians no longer have any state status, albeit they are hired, fired, and administered by a state official, the Adjutant General, acting as the agent of the federal government.

(2) In 1981, Congress extended FTCA coverage to ARNG soldiers performing full-time National Guard duty or inactive-duty training (such as any training or other duty under 32 U.S.C. 316, 502–505). Unlike making technicians federal employees, this extension of coverage did not affect their underlying status as state military personnel.

(d) Claims arising from the negligent acts or omissions of ARNG soldiers performing full-time National Guard duty or inactive-duty training, or of technicians, will be processed under the FTCA. Therefore, the NGCA is generally relevant only to claims arising from noncombat activities or outside the United States. Additionally, claims by members of the National Guard may be paid for property loss or damage incident to service if the claim is based on activities falling under this subpart and is not payable under AR 27–20, chapter 11.

§ 536.98 Claims payable under the National Guard Claims Act.

The provisions of § 536.75 apply to claims arising under this subpart.

§ 536.99 Claims not payable under the National Guard Claims Act.

The provisions of § 536.76 apply to claims arising under this subpart.

§ 536.100 Applicable law for claims under the National Guard Claims Act.

The provisions of § 536.77 apply to claims arising under this subpart.

§ 536.101 Settlement authority for claims under the National Guard Claims Act.

The provisions of § 536.78 apply to claims arising under this subpart.

§ 536.102 Actions on appeal under the National Guard Claims Act.

The provisions of § 536.79 apply to claims arising under this subpart.

Subpart G—Claims Cognizable Under International Agreements

§ 536.103 Statutory authority for claims cognizable under international claims agreements.

The authority for claims presented or processed under this subpart is set forth in the following federal laws and bi- or multinational agreements:

(a) 10 U.S.C. 2734a and 10 U.S.C. 2734b (the International Agreements Claims Act) as amended, for claims arising overseas under international agreements.

(b) Various international agreements, such as the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) and the Partnership for Peace (PfP) SOFA.

§ 536.104 Current agreements in force.

Current listings of known agreements in force are also posted on the USARCS Web site; for the address see § 536.2(a).

§ 536.105 Responsibilities generally/ international agreements claims.

(a) The Commander USARCS is responsible for:

(1) Providing policy guidance to command claims services or other responsible judge advocate (JA) offices on SOFA or other treaty reimbursement programs implementing 10 U.S.C. 2734a and 2734b.

(2) Monitoring the reimbursement system to ensure that programs for the proper verification and certification of reimbursement are in place.

(3) Monitoring funds reimbursed to or by foreign governments.

(b) *Responsibilities in the continental United States (CONUS).* The responsibility for implementing these agreements within the United States has been delegated to the Secretary of the Army (SA). The SA, in turn, has delegated that responsibility to the Commander USARCS, who is in charge of the receiving State office for the United States, as prescribed in DODD

5515.8. The Commander USARCS is responsible for maintaining direct liaison with sending State representatives and establishing procedures designed to carry out the provisions of this subpart.

§ 536.106 Definitions for international agreements claims.

(a) *Force and civilian component of force.* Members of the sending State's armed forces on temporary or permanent official duty within the receiving State, civilian employees of the sending State's armed forces, and those individuals acting in an official capacity for the sending State's armed forces. However, under provisions of the applicable SOFAs the sending State and the receiving State may agree to exclude from the definition of "force" certain individuals, units or formations that would otherwise be covered by the SOFA. Where such an exclusion has been created, this subpart will not apply to claims arising from actions or omission by those individuals, units or formations. "Force and civilian component of force" also includes claims arising out of acts or omissions made by military or civilian personnel, regardless of nationality, who are assigned or attached to, or employed by, an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, dated August 28, 1952, such as Supreme Allied Command, Atlantic.

(b) *Types of claims under agreements—*

(1) *Intergovernmental claims.* Claims of one contracting party against any other contracting party for damage to property owned by its armed services, or for injury or death suffered by a member of the armed services engaged in the performance of official duties, are waived. Claims above a minimal amount for damage to property owned by a governmental entity other than the armed services may be asserted. NATO SOFA, Article VIII, paragraph 1–4; Singapore SOFA, Article XVI, paragraph 2–3.

(2) *Third-party scope claims.* Claims arising out of any acts or omissions of members of a force or the civilian component of a sending State done in the

performance of official duty or any other act, omission, or occurrence for which the sending State is legally responsible shall be filed, considered and settled in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own armed service; see, for example, NATO SOFA, Article VIII, paragraph 5.

(3) *Ex gratia claims.* Claims arising out of tortious acts or omissions not done in the performance of official duties shall be considered by the sending State for an "ex gratia" payment that is made directly to the injured party; see, for example, NATO SOFA, Article VIII, paragraph 6.

§ 536.107 Scope for international agreements claims arising in the United States.

This section sets forth procedures and responsibilities for the investigation, processing, and settlement of claims arising out of any acts or omissions of members of a foreign military force or civilian component present in the United States or a territory, commonwealth, or possession thereof under the provisions of cost sharing reciprocal international agreements which contain claims settlement provisions applicable to claims arising in the United States. Article VIII of the NATO SOFA has reciprocal provisions applying to all NATO member countries; the Partnership for Peace (PFP) Agreement has similar provisions, as do the Singapore and Australian SOFAs.

§ 536.108 Claims payable under international agreements (for those arising in the United States).

(a) Within the United States, Art. VIII, NATO SOFA applies to claims arising within the North Atlantic Treaty Area, which includes CONUS and its territories and possessions north of the Tropic of Cancer (23.5 degrees north latitude). This excludes Puerto Rico, the Virgin Islands, and parts of Hawaii. Third-party scope claims are payable under subpart D or, if the claim arises incident to noncombat activities, under subpart C of this part. Maritime claims are payable under subpart H of